@#@#@#@#@#@#@

HONOURABLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO:16527 of 1995

DATED: 15-09-2006

Between:

Y.P.Kundaliya

..... PETITIONER

AND

1. Industrial Tribunal, M.J.Road, Hyderabad, rep.by its Presiding Officer and another

.....RESPONDENT

@#@#@#@#@#@#@

ORDER:

Seeking to have the award of the Industrial Tribunal, Hyderabad, in M.P.No.9 of 1992 in I.D.No.2 of 1990, quashed, the petitioner-workman has approached this Court.

Facts, in brief, are that the petitioner was employed as a technician in the business machine services section of the second respondent-company. He joined service on 27-07-1963. He was an active member of the Blue Star Employees' Union and its local

President when his services were dispensed with. The dispute relating to the charter of demands submitted by the Union had been referred to the Industrial Tribunal and was the subject matter of adjudication in I.D.No.2 of 1990. The petitioner resisted his transfer to Madras and, vide letter dated 10-04-1990, informed the respondents that he was not willing to give his consent to the transfer. The respondent-management, vide letter dated 19-06-1991, directed the petitioner to report at Madras functionally and to an officer at Hyderabad administratively. The petitioner was informed, vide Ex.P-4 letter dated 31-03-1992, that the service contracts for maintenance of ASCOT Accounting and Adding Machines had come to a close on 31-03-1992, that there was no possibility to continue the service contracts beyond 31-03-1992 and there was, therefore, no need to continue employees working in the business machine service section of the respondent-company. The respondent-management had offered an Early Voluntary Retirement Scheme to those who were working in the business machines department and the petitioner was called upon to inform his willingness to opt to retire under the early voluntary retirement scheme, in which case he was entitled to be paid Rs.1,65,000/-. Pursuant thereto, the petitioner opted for voluntary retirement under the scheme and submitted his willingness, vide Ex.P-8 letter dated 07-04-1992, whereunder he

informed the respondent that he understood the terms of the early voluntary retirement scheme communicated to him and that he intended to voluntarily retire from service with effect from 07-04-1992. He also requested the management to accede to his request for early voluntary retirement and pay him compensation. The petitioner was informed, vide Ex.P-9 letter dated 07-04-1992, that the management had accepted his letter for early voluntary retirement with effect from the close of the working hours of 07-04-1992 and that he would receive compensation of Rs.1,20,000/- in terms of the said early voluntary retirement scheme communicated to him. The petitioner was also directed to handover charge and to contact the Accounts Section for settlement of dues. The petitioner received a cheque for Rs.1,20,000/- on 08-04-1992. He also received a sum of Rs.50,506-65 ps. towards gratuity in full and final settlement of his account. A few days thereafter, on 12-04-1992, the petitioner submitted Ex.P-10 letter stating that he was mislead into accepting the voluntary retirement scheme and that the management had discriminated against him in payment of voluntary retirement compensation. The petitioner requested the respondent-management to recall the orders of retirement and to allow him to continue in service. In reply thereto the second respondent-management, vide its letter in Ex.P-11 dated 22-04-1992, denied

the allegations made by the petitioner in his letter dated 12-04-1992.

According to the petitioner, he was lured by an offer of being paid more, than what was due to be paid to him under the voluntary retirement scheme, and was coerced to exercise his option for voluntary retirement. Aggrieved by the failure of the second respondent to take him back into service, and in not cancelling his order of retirement dated 07-04-1992, the petitioner filed an application under Section 33-A of the Industrial Disputes Act, 1947 (for brevity 'the Act') in I.D.No.2 of 1990 on 10-07-1992. In his application, in M.P.No.9 of 1992, the petitioner contended that, while the compensation payable under the scheme was Rs.1,50,000/-, he was paid Rs.1,20,000/- only, that the management had given misleading information and had made false statements with regards the voluntary retirement scheme, and that the business machine service department was not closed down on 31-03-1992 as claimed by the respondent-management.

In its counter, filed before the Tribunal, the second respondent specifically pleaded that, they had not contravened the provisions of Section 33 of the Act and therefore the petition was not maintainable, that the petitioner had submitted a letter seeking voluntary retirement as per the voluntary retirement scheme offered by the management, that his request for voluntary

retirement had been accepted and he was permitted to voluntarily retire from service with effect from 07-04-1992 and that he had received all retiral benefits under the scheme. According to the respondents, voluntary retirement of an employee from service did not constitute alteration in his service conditions and did not amount to imposition of punishment for misconduct on his part. According to the respondents the petitioner had, himself, voluntarily retired from service, no orders had been passed by them against him and, as such, the question of setting aside any order did not arise. The respondents denied the allegation that the petitioner was the President of the All India Blue Star Employees' Union.

The Industrial Tribunal, Hyderabad, considered the maintainability of the petition, under Section 33-A of the Industrial Disputes Act, as a preliminary issue. Exs.P-1 to P-14 and Exs.R-1 to R-11 were marked with consent. The Tribunal held that the petitioner was employed as a technician in the business machine service section of the respondent-company, that as the operation of the business machine service section had become uneconomical, for want of customers, the respondent management intended to close the business machine service department with effect from 31-03-1992 and the same was duly intimated to the petitioner, vide Ex.P-4 letter dated 31-03-1992, stating that

consequent to the closure of the business machine service department there was no need or necessity to continue employees working in the department, that the respondent had also initiated a voluntary retirement scheme for employees working in the department to enable them to opt for voluntary retirement instead of facing retrenchment and that the petitioner, by his letter in Ex.P-8 dated 07-04-1992, had sought retirement from service voluntarily with effect from 07-04-1992, that the same was accepted by the management and that the said acceptance was duly communicated to the petitioner in Ex.P-9 and his voluntary retirement came into force with effect from the close of the working hours on 07-04-1992. The Tribunal also noted that the petitioner had received a cheque for Rs.1,20,000/- as compensation for voluntary retirement and that he had also received Rs.50,506-65 ps. towards gratuity etc., on 08-04-1992 in full and final settlement of his accounts and that the petitioner had come up with the application to set aside the order of retirement on the ground that he had submitted his application, under the voluntary retirement scheme, as a result of inducements and threats by the respondent.

The Tribunal noted the conditions precedent to an application under Section 33-A of the Industrial Disputes Act being filed.

1) There should have been a contravention by the management concerned of the provisions of Section 33 of the Act.

2) The contravention should have been during the pendency of the proceedings before the labour Court, Tribunal or National Tribunal, as the case may be.

3) The complainant should be aggrieved by such contravention.

4) The application made to the Tribunal must be during the period when the original proceedings are still pending.

5) The Tribunal would adjudicate an application under Section 33-A as if it were a dispute referred for adjudication by the appropriate Government.

The Tribunal held that, under Section 33-A of the Act, an employer must have contravened the service conditions which would entitle the workman to move the labour Court/Tribunal directly for redressal of his grievance. The Tribunal noted the contentions, urged on behalf of the workman, that the respondents had misrepresented facts regarding the voluntary retirement scheme, that he was induced by such misrepresentation to submit his application for voluntary retirement, that it amounted to contravention of Section 33 of the Act, that the scheme of voluntary retirement for employees was innovated by the management only to get rid of some of the workmen like the petitioner and that it amounted to unfair labour practice. The

Tribunal held that there was nothing on record to show that the business machine servicing section continued beyond 31-03-1992 or that the voluntary retirement scheme was introduced only for the purpose of dispensing with the services of the petitioner and that, obviously, the employees voluntary retirement scheme was introduced due to the closure of the business machine service department of the respondent-company with a view to give an opportunity to the workmen, working in that section, to seek voluntary retirement and to avoid being retrenched by the management. The Tribunal also noted that the petitioner had submitted his representation on 07-04-1992, seeking voluntary retirement from service with effect from 07-04-1992, that he had requested the management to accept his voluntary retirement and to pay him compensation of Rs.1,20,000/- and that, under Ex.P-9, the management had accepted the letter of voluntary retirement submitted by the petitioner and had allowed him to retire with effect from the close of the working hours of 07-04-1992, that they had also confirmed that the petitioner would be paid compensation of Rs.1,20,000/- in terms of the early voluntary retirement scheme communicated to him and that the petitioner's retirement from service had come into effect on acceptance of the letter submitted by him seeking voluntary retirement under the scheme. The Tribunal held that there was nothing on record to show that the

petitioner was induced or forced to submit the letter in Ex.P-8 seeking voluntary retirement and that he had also collected the compensation amount of Rs.1,20,000/- and gratuity and other terminal benefits on 08-04-1992, that he had submitted a petition in Ex.P-10 only on 12-04-1992 stating that though he was entitled to be paid Rs.1,50,000/- as compensation, under the voluntary retirement scheme, he was paid only Rs.1,20,000/-, that he had been deprived of the benefit of Rs.30,000/- and that he was forced to accept the voluntary retirement scheme. The Tribunal held that it was obviously an afterthought and that termination of the services of the petitioner was a result of his own act i.e., on account of his submission of the letter seeking voluntary retirement and the management accepting the same, that the petitioner had sought voluntary retirement from service and the management had accepted it and as such it could not be said that there was any contravention of the provisions of Section 33 of the Act. The Tribunal held that it was the petitioner who had submitted the retirement letter voluntarily, that the respondent had accepted it and had permitted him to retire and that they had also paid compensation and retirement benefits to the petitioner who had accepted the same on the next day i.e., on
08-04-1992.

The Tribunal held that the question as to whether there was

contravention of Section 33 of the Act or not was a jurisdictional question which was required to be decided, before it proceeded with the dispute, arising out of the complaint, on its merits and it was only if it was held that there had been such contravention would the Tribunal be justified in embarking upon a further adjudication of the complaint on merits. The Tribunal held that it was to be satisfied initially that there had been a contravention of Section 33 of the Act during the pendency of proceedings before it and that the conditions of service, which were applicable to the workman, immediately before the commencement of such proceedings, had been altered to his prejudice. The Tribunal held that, in the instant case, the petitioner had submitted his letter for voluntary retirement on 07-04-1992 and on the same day it had been accepted by the management and the petitioner had collected the retirement benefits and the compensation amount on the next day i.e., on 08-04-1992 and admittedly, even till the date of the award, the petitioner had not deposited the amount received by him on account of his voluntary retirement. The Tribunal held that termination of the services of the petitioner had come into force on account of his own action in submitting a letter of voluntary retirement and the management accepting the same, that there was no order of termination of the services of the petitioner by the management, that the management had not passed any positive

order terminating the services of the petitioner for any misconduct and that termination of the services of the petitioner had come into effect on accepting his letter of voluntary retirement by the management and that it was an automatic termination of the services of the petitioner on acceptance of his letter of voluntary retirement and, therefore, there was no contravention of Section 33 of the Act. The Tribunal held that the petition, filed under Section 33-A of the Act, was not maintainable.

Sri V.Hariharan, learned counsel for the petitioner-workman, would raise the following contentions before this Court:

1) The contravention under Section 33 of the Industrial Disputes Act, which is adjudicated under Section 33-A thereof, is similar to an adjudication under Section 10 of the Act;

2) The Tribunal should have called upon the workman to adduce oral evidence in support of his plea of coercion and failure to do so vitiated the proceedings;

3) This jurisdictional question, as to whether there was contravention of Section 33, was a mixed question of fact and law and the Tribunal would have jurisdiction to decide this question only after

oral evidence was let in and not prior thereto.

4) The Tribunal had erred in holding that there was no act on the part of the employer and that the petitioner had voluntarily accepted the voluntary retirement scheme.

5) The finding recorded by the Tribunal, that the acceptance of the voluntary retirement scheme was voluntary in nature, is based on no evidence;

6) The Tribunal failed to notice that the chain of events would itself establish that the petitioner had not on his own sought to be voluntarily retired from service.

7) When evidence was produced to show that employees were differentiated in matters of payment of retirement benefit, under the voluntary retirement scheme, (Ex.P-13 proceedings whereby a sum of Rs.1.50,000/- was paid to Sri T.M.S.Dhanpal on his request for voluntary retirement, under the voluntary retirement scheme, being accepted), the Tribunal should have held that the payments made to the petitioner were not under the voluntary retirement scheme and should

have disbelieved the version put forth by the respondent-management.

According to the learned counsel, if the Tribunal had accepted that the voluntary retirement scheme was not uniform, and that the payment made to the petitioner was not under the scheme, it would amount to contravention of Section 33 of the Act.

Since the amount paid to Sri T.M.S.Dhanpal under Ex.P-13 is said to be Rs.1,50,000/-, as against a sum of Rs.1,20,000/- paid to the petitioner on his voluntary retirement from service, I asked both the counsel as to whether the dispute could be amicably resolved if the said amount of Rs.30,000/- was paid. While Sri V.Hariharan, learned counsel for the petitioner, on instructions, would submit that his client was willing to accept this amount of Rs.30,000/-, without seeking an adjudication on the contentions raised, Sri P.Nageswara Sree, learned counsel for the respondent-management, on instructions, would submit that the respondent was not inclined to accede to such a request. It is, therefore, necessary for this Court to adjudicate on the contentions raised with regards the validity of the award of the Tribunal in M.P.No.9 of 1992 in I.D.No.2 of 1990.

Sri V.Hariharan, learned counsel for the petitioner, would draw attention of this Court to paragraph 5 of the award wherein

the Tribunal recorded as under:

> "Learned counsel for the respondent took an objection with regard to the maintainability of the petition under Section 33-A of the Act and he also agreed for the same being disposed of as a preliminary issue."

Learned counsel would state that, since the Tribunal was called upon by the respondent to decide the maintainability of the petition filed under Section 33-A of the Act, as a preliminary issue, it was in that context that the documents had been marked with consent. According to the learned counsel, if the Tribunal, in addition to determining the maintainability of the petition under Section 33-A of the Act as a preliminary issue, had intended to adjudicate on merits, it ought to have permitted the petitioner to adduce oral evidence in support of his plea that his application, for retirement on 07-04-1992, was not voluntary. Learned counsel would refer to the petition filed under Section 33-A of the Act wherein at paragraph 8 it had been urged that the petitioner was pressurized to accept retirement under the voluntary retirement scheme and at paragraph 11 that the management had hatched a dubious plan on him and had offered voluntary retirement scheme misleading him on false statements. The petitioner had also stated that the respondent wanted to dispense with his services and that of other workmen and had, therefore, adopted these dubious methods and that the action of the respondent amounted to unfair

labour practice and victimization of an employee.

Learned counsel would place reliance on **Mahendra Singh Dantwal v. Hindustan Motors Limited and others**[1] wherein the Supreme Court observed:-

> "……From the provisions of S.33 it is manifest that punitive action by the employer in whatever form it may be passed is permissible against an ordinary workman, as distinguished from a protected workman even during the pendency of proceedings before the Tribunal provided that the employer pays one month's wages and also applies to the concerned Tribunal for approval of his action. Since the action is punitive, namely, dismissal or discharge for misconduct, the Tribunal has to oversee the action to guarantee that no unfair labour practice or victimization has been practiced thereby. If the procedure of fair hearing has been observed the Tribunal has to find in an application under S.33 that a *prima facie* case is made out for dismissal. If, on the other hand, there is violation of the principles of natural justice in the enquiry, the Tribunal can go into the whole question relating to the misconduct and come to its own conclusion whether the same is established.
>
> Termination *simpliciter* or automatic termination of service under the conditions of service or under the standing orders is outside the scope of Section 33 of the Act. **This does not mean that the employer has the last word about the termination of service of an employee and can get away with it by describing it to be a simple termination in his letter of discharge addressed to the employee. It is also not a correct proposition of law that in case of a complaint under S.33A the Tribunal would be debarred from going into the question whether, notwithstanding the form of the order, in**

substance, it is an action of dismissal for misconduct and not termination *simpliciter……"*

(emphasis supplied)

The chain of events would show that the respondent, vide letter dated 31-03-1992, had called upon the petitioner to submit to the voluntary retirement scheme and had suggested payment of Rs.1,05,000/- as compensation. In reply thereto, the petitioner, vide letter dated 02-04-1992, had sought for certain clarifications and confirmation of the averments in the letter dated 31-03-1992. The respondent, vide letter dated 03-04-1992, informed the petitioner that the amount offered under the Early Voluntary Retirement Scheme, for employees who had completed 20 years of service, was only Rs.1,05,000/- and that there was no typographical error in the amount mentioned in the letter dated 31-03-1992. The petitioner was requested to give his consent within 24 hours of receipt of the letter and was also informed that, if there was any documentary proof that the amount offered was Rs.1,50,000/-, he should submit the same to the respondent. According to the petitioner, while delivering the said letter, the respondent made it clear that this was his last chance, that his services may be dispensed with at any moment, and despite his reservations, believing what the respondent had stated in their letter dated 03-04-1992, the petitioner had submitted a letter on 07-04-1992, as sought for by the respondent, that his request for

early voluntary retirement be accepted and that he be paid compensation of Rs.1,20,000/- due to him in terms of the Early Voluntary Retirement Scheme communicated to him. The petitioner's request for acceptance of his voluntary retirement was accepted on the very same day i.e., on 07-04-1992 by the respondent and it was confirmed that he would receive compensation of Rs.1,20,000/- in terms of the Early Voluntary Retirement Scheme. According to the petitioner, soon thereafter, he came to know that, at other centres, some of the employees had, in fact, been paid Rs.1,50,000/- as compensation under the Early Voluntary Retirement Scheme. The petitioner informed the respondent that he failed to understand as to why the company should treat different employees at different places on a different footing under the same scheme, and deprive him of his retiral benefits for a sum of Rs.30,000/-. He also stated that, since the letter of the respondent dated 31-03-1992 was more in the nature of a threat to displace him from service if he did not opt to accept even the communicated compensation, he had accepted the cheque. The petitioner informed that he was submitting his letter (Ex.P-10 dated 12-04-1992) hoping that the respondent would recall the retirement made on him and, as in the case of other employees, continue his employment. He also called upon the respondent to consider the misleading statement made to him

regarding the lesser amount of early voluntary retirement compensation paid to him. Before the Tribunal, the petitioner had also filed Ex.P-13 letter dated 08-07-1992 addressed to one Sri T.M.S.Dhanpal by the Regional Manager, Personnel and Administration of the respondent Company on 08-07-1992, in reply to his request for early voluntary retirement from the services of the company. Sri T.M.S.Dhanpal was informed that, as desired by him, the Management had accepted his voluntary retirement with effect from the close of the working hours on 08-07-1992 and that they confirmed that he would receive the compensation of Rs.1,75,000/- in terms of the early voluntary retirement scheme communicated to him. This document in Ex.P-13 dated 08-07-1992 forms the basis of the petitioner's case that he was induced, by the false representations made by the respondent, to accept the early voluntary retirement scheme. The petitioner had, in Ex.P-5 letter dated 02-04-1992, specifically mentioned that under the scheme, employees, who had put in more than 21 years of service, were offered Rs.1,50,000/- in lumpsum over and above other retirement benefits and though he had put in more than 27 years of service, he had only been offered Rs.1,05,000/- as a lumpsum amount if he opted for voluntary retirement. The petitioner had sought clarification as to whether it was a typographical mistake or whether the compensation of

Rs.1,05,000/-, mentioned by the respondent in its earlier letter was correct. He also stated that, as soon as he receive a reply to the letter, he would decide about the offer made by the respondent. In reply thereto, the respondent, in Ex.P-6 letter dated 03-04-1992, had reiterated that the amount offered was Rs.1,05,000/- and if any documents were available with the petitioner to prove that the amount offered was Rs.1,50,000/-, he should furnish the same. According to the petitioner since he was lead to believe by the respondent, in

Ex.P-6 letter dated 03-04-1992, that no one else had been paid Rs.1,50,000/-, believing their statement that a uniform lumpsum compensation of Rs.1.05,000/- was being paid to all employees, he had accepted voluntary retirement and just a few days thereafter, on 12-04-1992, on coming to know that, in other branches, employees had been paid Rs.1,50,000/-, he had sought to withdraw his letter of voluntary retirement. To support his plea that he was induced to accept the voluntary retirement scheme, under misrepresentation by the respondents, the petitioner relied on Ex.P-13 letter dated 08-07-1992 addressed by the respondent to Sri T.M.S.Dhanpal offering him a compensation of Rs.1,75,000/-

.

In coming to the conclusion that there was no act of termination on the part of the respondent and that the petitioner

had, on his own accord, voluntarily retired from service, the Tribunal has relied on the petitioner's application seeking voluntary retirement in Ex.P-8 letter dated 07-04-1992 and held that the respondent had merely accepted it in Ex.P-9 letter dated 07-04-1992. The Tribunal did not take into consideration Ex.P-13 letter dated 08-07-1992 addressed by the respondent to Sri T.M.S.Dhanpal paying him Rs,1,75,000/- as compensation nor did it examine the contents of the said letter in the light of the assertions made by the respondent in their letter in Ex.B-8 dated 03-04-1992 reiterating that the compensation was only Rs.1,05,000/- and if the petitioner had any document to show that Rs.1,50,000/- had been paid he should furnish the said information to the respondent.

The certiorari jurisdiction, which this Court exercises under Article 226 of the Constitution of India, is supervisory and not appellate. It is not for this Court to sit in appeal over findings of fact recorded by the Tribunal or to re-appreciate the evidence on record. A writ of certiorari can be issued only when it is shown that, in recording its findings, the Tribunal had erroneously refused to admit admissible and material evidence or had erroneously admitted inadmissible evidence which had influenced its findings. The finding of fact based on no evidence would also be regarded as an error of law which can be corrected by a writ of certiorari

(**Syed Yakoob v. K. S. Radhakrishnan**[2]). In cases where the Tribunal erroneously assumes or acts beyond its jurisdiction, or refuses to exercise the jurisdiction vested in it, a writ of certiorari would issue. In cases where the evidence on record, in respect of a question of fact, is not at all taken into consideration, and without reference to such evidence a finding of fact has arrived at by the Tribunal, such finding of fact must be held to be perverse. A perverse finding can be quashed by a writ of certiorari under Article 226 or under Article 227 of the Constitution of India. (**Achutananda Baidya v. Prafullya Kumar Gayen**[3]). As held by the Supreme Court, in **Mahendra Singh Dantwal**[1]**,** even in a case of termination simplicitor the Tribunal would not be debarred from going into the question whether, not withstanding the form of the order, in substance it is an act of dismissal and not of termination. In the present case, notwithstanding the letter submitted by the petitioner on 07-04-1992 seeking voluntary retirement, it was open to the Tribunal to examine as to whether the said letter was voluntary or whether it had been induced by misrepresentation, in which event, the petitioner could not be said to have voluntarily retired from service. The foundation for the application filed by the petitioner, before the Tribunal, under Section 33-A of the Industrial Disputes Act, were Ex.P-13 letter dated 08-07-1992 read in conjunction with Ex.P-6 letter dated

03-04-1992 issued by the respondent. Ex.P-13 letter dated 08-07-1992 has not even been considered by the Tribunal. This letter, in Ex.P-13 dated 08-07-1992, shows that one Sri T.M.S.Dhanpal was paid Rs.1,75,000/- as compensation for having voluntarily retired from service under the Early Voluntary Retirement Scheme. Whereas, according to the petitioner, he was led to believe in Ex.P-6 letter dated 03-04-1992 that all employees who had completed 20 years of service were being paid only Rs.1.05 lakhs. The letter in Ex.P-13 dated 08-07-1992 was a relevant piece of evidence which ought to have been considered by the Tribunal, and its failure to do so would necessitate the award being quashed.

It is not for this Court, however, to examine the relevance of the document in Ex.P-13 dated 08-07-1992 or to take upon itself the task of adjudicating as to whether the petitioner had voluntarily retired from service or had been induced by the respondent to do so through misrepresentation or suppression of facts. These are all matters for the Tribunal to examine. The petition in M.P.No.9 of 1992 is, therefore, remanded to the Tribunal for its adjudication afresh in accordance with law. Since the dispute relates to the year 1991, and more than 15 years have since elapsed, I consider it appropriate to direct the Tribunal to decide M.P.No.9 of 1992, after hearing both parties, in accordance with law, within a period

of three months from the date of receipt of a copy of this order.

The Writ Petition is disposed of accordingly. However, in the circumstances, without costs.

_____

15th September, 2006

SKM

---

[1] 1976 (2) LLJ 259

[2] AIR 1964 SC 477

[3] AIR 1997 SC 2077